

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5997 of 1984

Date of decision: 14-2-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

JASHWANTLAL SHANTILAL ANGJA

Appearance:

MR Nilay Anjaria for Petitioner

MR BR PARIKH for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 14/02/97

ORAL JUDGEMENT

The Gujarat State Road Transport Corporation, the

petitioner herein has filed this petition before this court challenging the award of the Labour Court, Ahmedabad, dated 30th July, 1984 in Reference (LCA) No. 1873 of 1982 under which the reference made at the instance of respondent workman was allowed and the Corporation was ordered to reinstate him in service in the post of Peon or helper, but his pay should be protected and he should not be given any amount of backwages.

2. Mr. Anjaria, learned counsel for the petitioner contended that the workman has not challenged the legality, validity and correctness of the inquiry report, he has accepted the charges framed against him and he has not produced any evidence to show and establish that the order made by the Corporation dismissing him from service has been made with a view to victimizing him or as an act of unfair labour practice, and as such the Labour Court has exceeded its jurisdiction in interfering with the punishment given to him for the proved misconduct. It has further been contended that the decision on which reliance has been placed by the Labour Court to substitute lesser punishment for the punishment given by the Corporation is no more good law in view of the later decision of this Court in the case of Chanduji Sendhaji Khant vs. Gujarat State Road Transport Corporation, reported in 1995(2) GLH pg.232. On the other hand the counsel for the respondent workman contended that the workman has not contested the fairness of the inquiry as he was made to understand by the Corporation that in case he foregoes the backwages and accepts the proposal to be reinstated on a post lower than the conductor, the Corporation has no objection in accepting the reference. It has further been contended by Mr. Pareek that though this understanding was given, after the decision of the Labour Court, the Corporation has filed this special civil application challenging the award. So far as the contention raised by the counsel for the petitioner is concerned, Mr. Pareek contended that in the matter of what punishment should be given, for the proved misconduct, to the delinquent employee, the Labour Court has power to interfere under section 11A of the Industrial Disputes Act, 1947.

3. Taking into consideration the totality of the facts of this case, in case the Labour Court has substituted the penalty of dismissal, as given to the respondent workman by the Corporation, by the lesser penalty of reinstatement in service on the post of peon or helper, without backwages, this Court, sitting under Article 227 of the Constitution of India, may not

interfere in the matter. Relying on the decision of the Supreme Court in the case of Laxmikant Revachand vs. Pratapsingh Mohansingh Pardeshi, reported in 1995(6) SCC 576, learned counsel for the respondent contended that in the facts of this case this court may not be justified in extending its jurisdiction under Article 227 of the Constitution.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

5. The respondent workman was a conductor, and he was charge sheeted for the misconduct of misappropriation of the Corporation's money, by issuing used tickets to the passengers. The misconduct alleged against respondent workman was found proved by the inquiry officer, and on the basis of the report and the material evidence, the disciplinary authority has taken decision to dismiss the workman from service. He raised industrial dispute and the matter was referred to the Labour Court for adjudication thereof. The pursis which has been filed by the workman before the Labour Court reads as under:

"I am willing to let go my salary of interim period in this case. I have no objection to exhibit the papers of inquiry, which are produced. Inquiry is admitted and do not wish to give oral evidence."

The pursis which has been filed by the Corporation has been shown to the Court by the counsel for the petitioner during the course of argument, which reads as under:

"That as the second party has admitted legality of inquiry and not led any oral evidence, the first party doesn't desire to lead any oral evidence and it may be treated as closed."

After going through both the pursis, it is difficult to accept the version of the respondent workman that he has foregone his backwages and his right to challenge the legality and validity of the inquiry and to lead any oral evidence, as there was understanding given to him by the Corporation not to oppose the award passed by the Labour Court of reinstating him on the lower post without backwages. Nothing has been produced by the respondent workman on record to show who was the person who had given this understanding to him. The counsel for the respondent contended that this understanding has been given by the Corporation, but the Corporation acts through its officers and, or, it takes decision by

passing resolution. The respondent workman has not given out the name of the officer of the Corporation who has given the aforesaid understanding on which he acted upon. So far as the Corporation is concerned, no material has been produced on the record to show and establish that such understanding has been given by the Corporation to the respondent workman. The facts which have come on record by way of pursis filed by respondent workman mars his own action. So the contention of the respondent workman that this petition is not maintainable on the ground that the Corporation has acted contrary to the understanding which has been given by the Corporation to him is not tenable.

6. Before the Labour Court the only point raised on behalf of the respondent workman was about punishment to be given to the workman. The Labour Court, relying on two decisions of this Court observed that it seems to be the clear view of the Hon'ble High Court of Gujarat that in such cases the persons should be employed in other similar post which does not involve daily handling of money. The Labour Court further observed that the principle laid down by this Court in the case of R.M. Parmar vs. Gujarat Electricity Board was reaffirmed in the case of Gujarat State Road Transport Corporation vs. Jamnadas Becharbhai, reported in 1982 GLH 1057. To substitute the penalty of dismissal by another penalty, the labour court has given out reasons, namely, first that the workman was not previously found guilty of misappropriation of money of the Corporation. The misconduct of misappropriation alleged is the first default.

7. I find from the award of the Labour Court that the interference with the punishment has been made by the Labour Court only on the basis of the law as laid down by this Court in the aforesaid two cases. There is no dispute that the Labour Court has powers under section 11A of the Industrial Disputes Act, 1947 to substitute its punishment for the punishment given to the delinquent employee by the disciplinary authority. It is not the case where the Corporation has altogether exonerated the respondent workman of the charges. The punishment of dismissal has been substituted by the order of reinstatement of the workman on the post of Peon or labourer, and further not to pay any backwages. However, his pay on the lower post was ordered to be protected. It is not in dispute that the post of peon or labourer is lower in status than the post of conductor in the Corporation. This court has protected the respondent workman by grant of interim relief. The award of

reinstatement was stayed on condition that during the pendency of this petition the amount of salary will be regularly paid to the workman, and the arrears will also be paid within reasonable time. So, for all these years the respondent workman is getting salary on the post of conductor. In the case of Chanduji Sendhaji Khant (supra) this Court has interfered with the award of the Labour Court, in which the conductor, who was dismissed from service on the ground of misappropriation of Corporation's money, was ordered to be reinstated in service on his original post at the minimum of the pay-scale and without any backwages. There it was found that as many as 77 misconducts were there against the workman. The facts of the present case are distinguishable from the facts of that case. This Court sitting under Article 227 of the Constitution of India will not examine the award made by the Labour Court as appellate court, and will not enter into the arena of reappreciation of evidence and substitute its own conclusion. In the matter of punishment to be given to the delinquent for proved misconduct, this court has very limited judicial power of review. Compared to that, the Labour Court has power under section 11A of the Industrial Disputes Act, 1947. It is true, the sine qua non for exercise of discretion under section 11A of the I.D. Act, 1947 is the satisfaction of the Labour Court that the punishment imposed by the disciplinary authority is disproportionate to the misconduct proved. However, in the present case, though the counsel for the petitioner contended that the Labour Court has solely relied upon the decision of this court and passed the order of substituting the penalty of dismissal by another penalty, the Labour Court has also considered the past conduct of the workman and then it has substituted another penalty for the penalty given by the disciplinary authority. Taking into consideration the totality of the facts of this case, it cannot be said that the discretion exercised by the Labour Court in the matter of punishment to be given to the delinquent workman is perverse or arbitrary, which calls for interference by this court sitting under Article 227 of the Constitution of India.

8. The Hon'ble Supreme Court in the case of Laxmikant Revachand (supra) held that the High Court, under Article 227 of the Constitution, cannot assume unlimited prerogative to correct all species of hardship or wrong decision. It must be restricted to grave dereliction of duty and flagrant abuse of the fundamental principles of law, where grave injustice would be done unless the High Court interferes. The misconduct which was found proved against the respondent workman has not

gone without any penalty. The Labour Court, as stated earlier, taking into consideration the totality of the facts of the case and past conduct of the respondent workman, substituted the penalty of dismissal by the penalty of reinstatement on the post of peon or labourer and further refused to award backwages. However, the order which has been made by the Labour Court to protect the pay of the respondent workman on his reinstatement on the post of peon/helper may not be justified. The counsel for the respondent workman very fairly conceded that he has no objection in case to that extent the award of the Labour Court is modified. Hence, with the consent of the counsel for the respondent workman, part of the award of the Labour Court to the extent it directs 'for the protection of pay of the respondent workman' is quashed and set aside.

9. In the result this special civil application fails and the same is dismissed, subject to the aforesaid modification in the award of the Labour Court made with the consent of the counsel for the respondent workman. However, it is made clear that this modification of the award will be effective only from the date of this judgment. The pay of the respondent workman shall be fixed on the post of peon or helper, as the case may be, in the pay-scale of that post, with effect from the date of this judgment. Rule discharged. No order as to costs.

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